MAY 1
CHARLES ELMORE CROPLEY

FILE COPY

No. 42

In the Supreme Court of the United States

OCTOBER TERM, 1931

PHILIP ELTING, COLLECTOR OF CUSTOMS, PORT OF NEW YORK, PETITIONER

v.

NORTH GERMAN LLOYD

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In the Supreme Court of the United States

No. 885

PHILIP ELTING, COLLECTOR OF CUSTOMS, PORT OF NEW YORK, petitioner

v.

NORTH GERMAN LLOYD

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondent, in its brief in opposition to the Government's petition for a writ of certiorari in this case, contends that the case does not warrant review, since it arose under the Quota Act of 1921 as amended, a statute superseded in part by the later Immigration Act of 1924. The pertinent language of these two statutes is so similar that it is evident upon examination of them that the construction of the former will in the majority of cases control that of the latter. The applicable sections of the Quota Act are set forth in the appendix to the Government's petition. The corresponding sections of the Immigration Act of 1924 are printed in the Appendix, *infra*, p. 4.

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It is apparent that the only difference between the two statutes which could possibly cause any different construction of their pertinent provisions is that the 1924 Act expressly renders unlawful the bringing into this country of "any quota immigrant having an immigration visa the visa in which specifies him as a non-quota immigrant." This is more specific than the earlier provision against the bringing in of "any alien not admissible under the terms of this Act or regulations," but adds nothing to the meaning of the earlier Act and regulations which contain in substance these additional provisions of the 1924 Act. The statutory provisions chiefly concerned in this case, those as to the refund of fines after satisfying the Secretary of Labor of the transportation company's diligence, are almost identical in the two Acts.

The respondent urges that the case is of no importance, as it arose under "a defunct statute." On April 29, 1932, there were 506 causes of action pending in the District Court for the Southern District of New York which arose under this Quota Act of 1921, of which approximately 250 will apparently be controlled by the decision in the instant case. A reexamination of the pending cases gives ample support for our statement that the questions presented by the Government's petition are of real importance.

A petition for certiorari is being submitted to this Court in No. 902, *Lloyd Sabaudo Societa Anon-*

ima Per Azioni v. *Philip Elting.* This decision of the Circuit Court of Appeals for the Second Circuit is cited in our petition in the instant case, at page 7, as difficult of reconciliation with the decision below. The fifteenth cause of action in the *Lloyd Sabaudo* case involved the Secretary's refusal to refund a fine imposed for bringing to the United States an inadmissible alien who had secured an improperly issued nonquota visa as had the alien in the instant case. At least eight of the fifteen aliens involved in the *Lloyd Sabaudo* case were brought into the United States while the Quota Act as amended on May 11, 1922, was in force. (See Record in *Lloyd Sabaudo* case, pages 60–65, 303–304, 319, 359, 370, 403.) The Government is not opposing the issuance of the writ in the *Lloyd Sabaudo* case. A review of the instant case is equally important.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
CHARLES B. RUGG,
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MAY, 1932.

APPENDIX

The Immigration Act of 1924, c. 190, 43 Stat. 153, 154, 159, 163, provides in part:

> SEC. 11. (a) The annual quota of any nationality shall be 2 per centum of the number of foreign-born individuals of such nationality resident in continental United States as determined by the United States census of 1890, but the minimum quota of any nationality shall be 100.
>
> SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * * (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, * * *.
>
> SEC. 16. (a) It shall be unlawful for any person, including any transportation company, or the owner, master, agent, charterer, or consignee of any vessel, to bring to the United States by water from any place outside thereof (other than foreign contiguous territory) (1) any immigrant who does not have an unexpired immigration visa, or (2) any quota immigrant having an immigration visa the visa in which specifies him as a nonquota immigrant.
>
> (b) If it appears to the satisfaction of the Secretary of Labor that any immigrant has been so brought, such person, or transportation company, or the master, agent, owner, charterer, or consignee of any such vessel,

shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each immigrant so brought, and in addition a sum equal to that paid by such immigrant for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter sum to be delivered by the collector of customs to the immigrant on whose account assessed. No vessel shall be granted clearance pending the determination of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs.

(c) Such sums shall not be remitted or refunded, unless it appears to the satisfaction of the Secretary of Labor that such person, and the owner, master, agent, charterer, and consignee of the vessel, prior to the departure of the vessel from the last port outside the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, (1) that the individual transported was an immigrant, if the fine was imposed for bringing an immigrant without an unexpired immigration visa, or (2) that the individual transported was a quota immigrant, if the fine was imposed for bringing a quota immigrant the visa in whose immigration visa specified him as being a non-quota immigrant.

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